

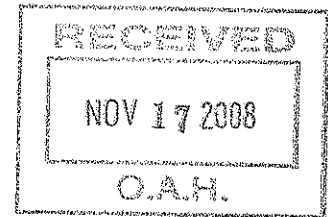


ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini
Superintendent of Financial Institutions

Janet Napolitano
Governor

November 17, 2008



Via Certified Mail

Hillary Hang Nguyen
Managing Member
Elite Funding Group L.L.C.
9299 W. Olive Ave., Suite 404
Peoria, AZ 85345

Reference: Docket # 09F-BD046-BNK / Elite Funding Group L.L.C.

Dear Ms. Nguyen:

Please find the enclosed formal Notice of Hearing. The hearing is scheduled for **December 23, 2008, at 1:30 p.m.** at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona.

Please contact **Assistant Attorney General Craig Raby** at **(602) 542-8889** with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert D. Charlton".

Robert D. Charlton
Assistant Superintendent

RDC:sll

Enclosures

cc: Craig Raby, Assistant Attorney General

RECEIVED

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O.A.H.

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Mortgage Broker License of:

No. 09F-BD046-BNK

ELITE FUNDING GROUP L.L.C.

9299 W. Olive Ave, Suite 404

Peoria, AZ 85345

NOTICE OF HEARING

Petitioner.

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137, 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for December 23, 2008, at 1:30 p.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Brian B. Tully, at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
16 made by a court reporter or by electronic means. Any party that requests a transcript of the
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioner shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioner's position
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
4 Hearing. If the answering Petitioner is without or are unable to reasonably obtain knowledge or
5 information sufficient to form a belief as to the truth of an assertion, Petitioner shall so state, which
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioner
7 intends to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioner
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioner will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate, including
13 suspension, revocation, denial of Petitioner's license or affirming an order to Cease and Desist and
14 imposition of a civil penalty or restitution to any injured party.

15 Petitioner's answer shall be mailed or delivered to the Arizona Department of Financial
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**
21 **alternative format or assistance with physical accessibility.** Requests for accommodations must
22 be made as early as possible to allow time to arrange the accommodations. If accommodations are
23 required, call the Office of Administrative Hearings at (602) 542-9826.

24 FACTS

25 1. Petitioner Elite Funding Group, L.L.C. ("EFG") is an Arizona limited liability company
26 authorized to transact business in Arizona as a mortgage broker, license number MB 0908141,

1 within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of EFG's business is that of making,
2 negotiating, or offering to make or negotiate loans secured by Arizona real property, within the
3 meaning of A.R.S. § 6-901(6).

4 2. Correspondence received by the Department on September 19, 2008, revealed that EFG
5 failed to obtain prior approval before completing a change in control, specifically:

- 6 a. The Department's records list Hang D. Nguyen, 50% owner, and Jason Nguyen, 50%
7 owner of EFG;
- 8 b. On September 19, 2008, the Department received a Mortgage Broker License
9 Renewal Application ("Renewal"). Question number 10 of the Renewal lists the
10 current owners of EFG as Hillary Hang Nguyen, 75%, and Luat Nguyen, 25% owner;
- 11 c. The Renewal was signed on September 15, 2008 by Hang Nguyen,
12 member/manager/broker;
- 13 d. On September 24, 2008, the Department requested clarification on the ownership of
14 EFG via facsimile;
- 15 e. On September 29, 2008, the Department received:
 - 16 i. A letter dated September 26, 2008 from Hang Hillary Nguyen,
17 Member/Manager/Broker which states, "There has been an oversight at Elite
18 Funding Group L.L.C. in updating AZDFI with our L.L.C. ownership
19 records...Attached are documents showing change in ownership that took
20 place 10/25/2007 and 02/12/2008:". The letter states that the ownership of
21 EFG prior to October 25, 2007 was Hang Hillary Nguyen, 50%, and Jason
22 Nguyen, 50%; from October 25, 2007 until February 12, 2008 the ownership
23 of EFG was Hang Hillary Nguyen, 100%; and since February 12, 2008 the
24 ownership of EFG is Hang Hillary Nguyen, 75%, and Luat Nguyen, 25%;
 - 25 ii. Copies of the documents filed with the Arizona Corporation Commission
26 removing Jason Nguyen as a member on October 25, 2007 and adding Luat

Nguyen as a member of EFG on February 12, 2008; and

iii. A copy of the Assignment of Interest in EFG effective February 12, 2008; and

f. On October 9, 2008, the Department sent instructions to EFG via facsimile on how to amend their records as to the ownership of EFG.

3. Correspondence received by the Department on September 19, 2008, further revealed that EFG failed to properly notify the Department of a change in address; specifically:

a. The Department records show the primary address of EFG as 9299 W. Olive Ave., Suite 405, Peoria, AZ 85345. The Renewal discloses the primary address of EFG as 9299 W. Olive Ave., Suite 404, Peoria, AZ 85345.

4. The Department, to date, has not received the required notification and fees as required under A.A.C. R20-4-916.

5. The Department has also not received the required documentation for a change in ownership as requested in the Department's October 9, 2008 facsimile to EFG. Items still required to be submitted include the MU2, AZ-MU2 and fingerprint card for Luat Nguyen as well as the fee to process the fingerprint card.

6. Based upon the above findings, the Department issued and served upon EFG a Notice of Assessment on October 27, 2008.

7. On October 29, 2008, Petitioner filed a Request For Hearing to appeal the Notice of Assessment.

LAW

1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage broker business and with the enforcement of statutes, rules, and regulations relating to mortgage brokers.

2. By the conduct set forth in the Findings of Fact, EFG violated the following:

a. A.R.S. § 6-903(O) by failing to seek or receive the Superintendent's prior written consent to change ownership; and

b. A.A.C. R20-4-916 by failing to properly notify the Department of a change in address.

3. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the above-described violations, the Superintendent may affirm the October 27, Notice of Assessment, pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132; suspend or revoke Petitioner's license pursuant to A.R.S. § 6-905; and order any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

DATED this 17th day of November, 2008.

Felecia A. Rotellini
Superintendent of Financial Institutions

By Robert D. Charlton
Robert D. Charlton
Assistant Superintendent of Financial Institutions

1 ORIGINAL OF THE NOTICE OF HEARING filed
this 19th day of November 2008 in the office of:

2 Felecia A. Rotellini
3 Superintendent of Financial Institutions
Arizona Department of Financial Institutions
4 Attn: Susan L. Longo
2910 N. 44th Street, Suite 310
5 Phoenix, AZ 85018

6 COPY of the foregoing mailed/delivered same date to:

7 Brian B. Tully, Administrative Law Judge
Office of Administrative Hearings
8 1400 W. Washington, Suite 101
Phoenix, AZ 85007

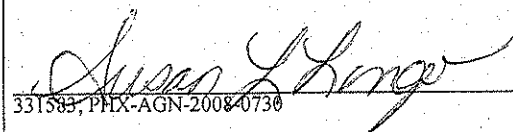
9 Craig A. Raby, Assistant Attorney General
10 Attorney General's Office
1275 West Washington
11 Phoenix, AZ 85007

12 Richard Fergus, Division Manager
Robert D. Charlton, Assistant Superintendent
13 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
14 Phoenix, AZ 85018

15 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

16 Hillary Hang Nguyen, Managing Member
17 Elite Funding Group L.L.C.
9299 W. Olive Ave, Suite 404
18 Peoria, AZ 85345

19 Kenneth J. Peace, Statutory Agent for
20 Elite Funding Group L.L.C.
c/o Braun Siler Kruzel PC
21 14811 N. Kierland Blvd., Suite 500
Scottsdale, AZ 85254

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